



# Federal Register

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**Part III**

## **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 414  
Safety Approvals; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 414**

[Docket No. FAA-2005-21332]

RIN 2120-A150

**Safety Approvals**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration proposes to amend commercial space transportation regulations by adding procedures for obtaining a safety approval. Application for a safety approval is voluntary. A safety approval is an FAA determination that a licensed launch or reentry may be conducted using a launch vehicle, reentry vehicle, safety system, process, service, or personnel approved under this part. The safety approval holder could then offer a launch vehicle,

reentry vehicle, safety system, process, service, or personnel to prospective launch and reentry licensees for use within a defined and proven envelope. Those licensees would not need added FAA approval of that portion of their license application. Proposed rules are needed to establish the procedures for obtaining a safety approval from the FAA.

**DATES:** Send your comments on or before August 30, 2005.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2005-21332 using any of the following methods:

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building,

Room PL-401, Washington, DC 20590-001.

- Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Questions regarding:	Contact	Address	Phone
Safety approval process	Charles P. Brinkman, Licensing and Safety Division (AST-200).	Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, DOT, Room 331, 800 Independence Avenue, SW., Washington, DC 20591.	(202) 267-7715.
	or Esta Rosenberg, Office of the Chief Counsel (AGC-250).	Federal Aviation Administration, DOT, Room 915, 800 Independence Avenue, SW., Washington, DC 20591.	(202) 366-9320.
Technical standards .....	Jim Kabbara, System Engineering and Training Division (AST-300).	Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, DOT, Room 331, 800 Independence Avenue, SW., Washington, DC 20591.	(202) 267-8379.

**SUPPLEMENTARY INFORMATION:**

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Assessment, and Unfunded Mandates Assessment  
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### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

*Privacy Act:* Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

### Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as codified and amended at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101-70121 (the Act), authorizes the Department of Transportation and the FAA, through delegations, to oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105. The FAA is also responsible for encouraging, facilitating and promoting commercial space launches by the private sector. 49 U.S.C. 70103.

Authority for this particular rulemaking is derived from Section 70105(a)(2) that states the Secretary may establish procedures for "safety approvals" of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel for use in conducting licensed commercial space launch or reentry activities. (See Commercial Space Launch Act of 1998, Public Law 105-303) The 2004 amendments to the Act provided details regarding safety approvals for personnel to include explicitly approval procedures for the purpose of protecting the health and safety of crews and space flight participants. (See Commercial Space Launch Amendments Act of 2004, Public Law 108-492)

### Background

#### History

The Commercial Space Launch Act of 1984, as amended and codified at 49 U.S.C. Subtitle IX—Commercial Space Transportation, Chapter 701, Commercial Space Launch Activities, 49 U.S.C. 70101-70121 (the Act), authorizes the Department of Transportation to oversee, license, and regulate commercial launch and reentry activities (including launch and reentry site operation) carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105. The Act directs the Secretary of Transportation to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105. By delegation, the FAA Administrator carries out the Secretary's authority.

Under the same delegated authority, the FAA has the responsibility for encouraging, facilitating, and promoting commercial space launches by the private sector. 49 U.S.C. 70103. The 1998 amendments to the Act added authority for establishment of procedures for "safety approvals" of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel for use in conducting licensed commercial space launch or reentry activities. (See Commercial Space Launch Act of 1998, Public Law 105-303) The 2004 amendments to the Act provided details regarding safety approvals for personnel to include explicitly approval procedures for the purpose of protecting the health and safety of crews and space flight participants. (See Commercial Space Launch Amendments Act of 2004, Public Law 108-492)

A significant addition to FAA authority is the ability to issue a safety approval separate from a licensing determination. A launch vehicle, reentry vehicle, safety system, process, service, or personnel (including crews and space flight participants) proposed for use in a licensed launch or reentry may be eligible for safety approval consideration. A safety approval would allow the use of an approved launch vehicle, reentry vehicle, safety system, process, service, or personnel without requiring reexamination of fitness for a particular launch or reentry proposal subject to FAA licensing. The decision to apply for a safety approval would be a voluntary one for an eligible applicant. Launch or reentry licensing would not require use of safety-approved systems or processes. Issuing a safety approval

would not represent authorization to conduct a launch or reentry.

Reliance on a safety-approved launch vehicle, reentry vehicle, safety system, process, service, or personnel could simplify launch and reentry licensing by the FAA. A safety approval would relieve the license applicant and the agency of the need to reconsider the impacts of the safety-approved element of a launch or reentry proposal on public health and safety and the safety of property. This would hold true as long as the proposed use falls within the terms of the safety approval. A safety approval would allow the FAA to apply findings related to safety approvals to different license applicants proposing to use the approved element.

#### Safety Approval Benefits

The safety approval, separate from a license, would allow the safety approval holder to offer a launch vehicle, reentry vehicle, safety system, process, service, or personnel to prospective launch and reentry vehicle operators, including reusable launch vehicle (RLV) mission operators. Those licensees would not need added FAA review of and approval for that portion of the license application. The FAA would evaluate the proposed use of a safety-approved element for a proposed launch or reentry activity to ensure that use of the safety approval does not exceed its approved envelope.

#### Benefit to the Commercial Space Transportation Industry

The nature of the commercial space transportation industry makes safety approvals attractive to prospective license applicants, launch and reentry vehicle operators, and other industry representatives. Major components, parts, or services are often used on different launch vehicles by different operators. Personnel involved in operational safety support such as telemetry, tracking, and range safety may support multiple launch or reentry operators.

The safety approval would benefit various entities, including the holder of the safety approval, license applicants and licensees, and the FAA. Entities other than licensed vehicle operators could offer approved systems or services to license applicants or licensees who might wish to use these systems or services. This rule would also benefit prospective licensees by allowing them to use "approved" systems and services with a minimum of added documentation for the safety-approved systems and services in their license applications.

An entity that receives a safety approval for a new system or process would be able to offer it to a licensee. Historically, the launch operator has borne the risk of proposing a new system or process. Many launch operators have not thought the benefits worth the cost to prove the safety of a new system or process because of the small number of launches. With the proposed safety approval process in place, the risk of approval would transfer to the prospective safety approval applicant, that is, the provider of the safety-approved system or service. This optional process could open the door to new providers offering these systems or services. The provider might elect to seek a safety approval and market the system or service to launch operators. This safety approval would allow for the potential use of an approved system or component on more than one specific launch or reentry vehicle. Therefore, safety approvals have the potential to make the industry more willing to adopt innovative systems and processes because costs of obtaining the approval would be shared, rather than borne by a single launch operator.

Where appropriate, the FAA would coordinate its review of applications for safety approvals with other government agencies and especially with the operators of federal launch ranges. Currently, the FAA works closely with the U.S. Air Force because most FAA-licensed launches occur at ranges operated by the U.S. Air Force. However, other federal agencies may have an interest in an item under consideration for a safety approval. The FAA expects to consult with these agencies to minimize the possibility of a discrepancy between its evaluation and any later evaluation by another federal agency.

#### Benefit to the FAA

The safety approval would also benefit the FAA because a portion of the documentation and analysis necessary for the FAA to make a licensing determination would have already been done as part of the safety approval process. The FAA would not have to conduct that analysis anew for each license applicant proposing to use a safety-approved system or service. The safety approval would describe the system or service and contain the analyses undertaken in granting it.

As part of its licensing responsibility, the FAA's Commercial Space Transportation Office (AST) would perform a safety review to ensure the proposed activity does not jeopardize public health and safety and the safety

of property. To conduct a safety review, the FAA would require information about a launch license applicant's safety organization, vehicle design, and operational safety practices. The FAA makes maximum use of the information a license applicant must provide to a Federal launch range. If the launch is not from a Federal launch range, the license applicant must provide the FAA with information similar to what it would have had to provide to a Federal launch range. This would allow the applicant to demonstrate a level of safety equivalent to that practiced at a Federal launch range. If a safety approval has been issued, the FAA would use information previously submitted as the basis for a safety approval in its evaluation of a license application.

#### Need for a Regulation

49 U.S.C. Subtitle IX, Commercial Space Transportation, Chapter 701 provides that the FAA may issue procedures for obtaining a safety approval. The purpose of this regulation is to provide the rules and procedures for obtaining safety approvals, as envisioned by the statutory authority.

#### General Discussion of the Proposals

The FAA has the responsibility to encourage, facilitate, and promote commercial space launches by the private sector. It has the authority to establish procedures for safety approvals of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel for use in conducting licensed commercial space launch or reentry activities. In this rulemaking action, FAA proposes to add part 414 to 14 CFR Chapter III. This part will lay out the requirements and procedures for seeking a safety approval.

#### Section-by-Section Discussion of the Proposals

##### *Subpart A—General*

##### *Section 414.1 What is the basis and scope of this rule?*

This rulemaking would establish the procedures governing the safety approval application and FAA procedures for transferring an existing safety approval and renewing an existing safety approval. In addition, this rulemaking outlines the criteria we would apply to safety approval applications and the procedures for approving or denying a safety approval.

Furthermore, this rulemaking identifies what would be eligible for safety approvals and the rights and

privileges a safety approval would confer.

*Section 414.3 To what does this rule apply?*

This rulemaking would apply to any applicant seeking a safety approval for a launch vehicle, reentry vehicle, safety system, process, service, or personnel. The safety approval would be used in the conduct of a licensed launch of a launch vehicle or the reentry of a reentry vehicle.

*Section 414.5 What is a safety approval?*

A safety approval is an FAA determination that a licensed launch or reentry may be conducted using a launch vehicle, reentry vehicle, safety system, process, service, or personnel approved under this part. Use, when occurring within a defined and proven envelope, would not jeopardize public health and safety or the safety of property. It is not the equivalent of certification under a design standard, nor is it a warranty of performance.

The safety approval is consistent with current FAA practice. In issuing a license, we routinely incorporate past findings from license evaluations for a particular applicant in evaluating applications for new licenses or renewals of licenses for that same applicant. A safety approval would allow us to apply findings related to safety approvals to different license applicants proposing to use the approved element. Therefore, a person offering a safety-approved vehicle, system, service, or personnel would enjoy the ability to offer approved "off-the-shelf" systems or services. A launch operator wishing to use an approved system or service could rely on its approval for a particular use. License applicants for a launch or reentry license could propose to use an approved system or service. A license applicant for a launch or reentry license would only need to show that its proposed use is compatible with the use and limits specified in the safety approval and will work as intended within the entire launch or reentry system.

The ability to rely on a safety approval would relieve the holder of supplying the specific information already provided in support of a safety approval. Safety approval holders would also not need to re-qualify an approved system for each use as long as that use is consistent with launch or reentry safety, as defined in the safety approval parameters, terms, and conditions. However, the safety approval would not relieve the holder of

proving the safety of any portion of the operation not covered by a safety approval. A safety approval of a launch vehicle, reentry vehicle, safety system, process, service, or personnel indicates the approved element could be used to support a launch or reentry proposal and is consistent with FAA review standards for licensing, that is, using the approved element would not jeopardize public health or safety or the safety of property. The safety approval meets the safety criteria for licensing a launch or reentry when used as intended and within the limits of the approval.

*What is eligible for a safety approval?*

Any safety system or service integral to launch or reentry operations is a possible candidate for a safety approval, as well as the entire vehicle and personnel who perform key safety functions. For personnel, safety approvals would likely be a set of qualifications for a particular safety function (including crews and space flight participants). Candidates for a safety approval might include:

- Launch/reentry vehicles,
- Safety systems, for example, flight termination systems, both on-board and ground tracking systems, and vehicle health monitoring systems,
- Safety processes, for example, a method for installing flight termination system hardware,
- Approved testing procedures by system,
- Approved maintenance procedures,
- Approved flight-testing process/procedures,
- Flight safety analysis, such as wind weighting,
- Flight safety monitoring, and
- Personnel (qualification section), for carrying out such functions such as:
  - Range safety officer,
  - Safety personnel,
  - Safety official,
  - Radar operators,
  - Flight safety officer,
  - Crew,
  - Space flight participants.

We would review each application individually to determine whether to issue a safety approval for a proposed launch vehicle, reentry vehicle, safety system, process, service, or personnel based on existing performance standards, accepted practice, or other proposed criteria.

*Section 414.7 Who must obtain a safety approval?*

No one would be required to obtain a safety approval. The program would be entirely voluntary.

*Section 414.9 Who may apply for a safety approval?*

Anyone may apply for a safety approval. However, the applicant should be the individual or entity having the most direct responsibility, knowledge, and experience with the system or service for which a safety approval is sought. For instance, the manufacturer would be expected to be the applicant for a safety approval for hardware. A different applicant might seek a safety approval for the operation or maintenance of that same hardware.

*Section 414.11 What rights are not conferred by a safety approval?*

While a safety approval confers distinct advantages to the holder, there are rights that would not come with a safety approval.

(a) A safety approval would not confer any authority to conduct launch, reentry, or site operations.

(b) A safety approval would not be a finding, guarantee, or warranty that a safety-approved element of a launch or reentry proposal will assure mission success or necessarily perform as represented by the manufacturer. The safety approval means that a launch or reentry may be conducted using the approved element without jeopardizing the safety of the uninvolved public. (The launch or reentry proposal, in its entirety must satisfy licensing and safety requirements contained in FAA Commercial Space Transportation regulations.)

(c) Issuance of a safety approval would not relieve you of the responsibility to comply with all applicable requirements of law or regulation that may apply to its activities.

(d) A safety approval would not be certification by the FAA of a vehicle or component design or of services involved in a licensed launch or reentry.

(e) Issuance of a safety approval would not suggest that mission assurance will be achieved or that a launch system will not fail.

(f) Finally, a safety approval would not be a finding of adequacy for purposes outside the stated limits of the safety approval.

*Subpart B—Safety Approval Application*

*Section 414.13 What is the pre-application process?*

We would encourage you to consult with staff in the Commercial Space Transportation (AST) office before submitting an application. This would enable you and AST to identify any potential safety issues during the

planning stages of your safety approval application. We could tell you whether we believe the proposal is eligible and suitable for a safety approval. We could also provide guidance about the specific information and detail required. If your application required changes, they would be easier and less costly to make at this stage than midway through the process.

*Section 414.15 How will the FAA determine whether something is eligible and suitable for a safety approval?*

We would consider several factors when determining the eligibility and suitability of something proposed for a safety approval. The following table details some of the major factors.

Identity of the applicant:

- Individuals or entities who manufacture and offer the applicant launch vehicles or reentry vehicles or launch or reentry services.
- Individuals or entities who design or develop safety systems or processes.
- Personnel who perform critical safety roles used to conduct a licensed launch or reentry.

Knowledge of the applicant about systems or services:

- Ability to show the design and operation qualifies for the applicant a safety approval.
  - A manufacturer would apply for a safety approval of a launch vehicle.
  - A different applicant, with performance expertise and qualifications, would apply for a safety approval to operate the hardware.

Standards for eligibility:

Measure against existing performance standards, eligibility accepted practice, or other proposed criteria.

*Section 414.17 How do I prepare an application?*

This section details the information you would include in your application for a safety approval. Besides administrative and technical information, we would request you cite relevant performance standards and criteria against which we would evaluate the system or service proposed for a safety approval. An acceptable standard allows an applicant to show that public health and safety and the safety of property would be maintained to the level of the safety criteria named in FAA regulations. The scope of the approval would be based on the scope of the demonstration. For example, for a radar tracking system integral to range safety, you might demonstrate the ability of the radar to track launch vehicles as a function of radar cross section, vehicle velocity, acceleration, and trajectory along with notable

ambient effects, such as weather conditions. The demonstration and, therefore, the scope of the applicability of the safety approval would not be specific to a particular vehicle. Although it would be mutually beneficial to the safety approval applicant and the FAA to create a safety approval that was not specific to a particular vehicle, sometimes that approach may not be possible. It is always up to you to determine whether the cost of obtaining a safety approval is worthwhile. This is especially true given that we will incorporate prior findings from a past licensing determination in issuing a new license for essentially the same or very similar launch activity.

*Section 414.19 How can I assure confidentiality of the information I submit on a safety approval application?*

We appreciate that your safety approval application might consist of some trade secrets, proprietary information, or other confidential information. Although we cannot assure confidentiality because the application, in whole or in part, may be subject to disclosure under certain laws, for example, the Freedom of Information Act, we try to maintain strict confidentiality. Our experience with license applications has demonstrated our commitment to confidentiality. This rulemaking would outline the steps to follow to protect trade secrets, proprietary commercial or financial data, or any other information you regard as confidential. Some of these steps are:

- Make a written request for confidentiality at the time you submit information or data to the FAA.
- Mark confidential information or data with an identifying legend, such as "Proprietary Information," "Proprietary Commercial Information," "Trade Secret," or "Confidential Treatment Requested."
- Provide a cover sheet when marking is not practical.
- Do not propose safety standards that you consider secret, proprietary, and confidential. They cannot be used as a basis for issuance of safety approval.

*Section 414.21 How does FAA handle an initial application?*

If there has been pre-application consultation, we would conduct an initial screening to determine the system or service under consideration for a safety approval. In all cases, we would then determine if the criteria you cited are an acceptable basis for

evaluating the proposed system or service.

Once we complete the screening, we would tell you if the application is complete or incomplete. If it is complete, we would start the reviews or evaluations required for a safety approval determination. If it is incomplete, we would tell you the reasons we are rejecting the application. You could attempt to correct any deficiencies and resubmit your application for consideration.

*Section 414.23 Is there a specified timeframe for the review period?*

We propose no review period deadlines for issuance or denial of a safety approval. There are no legislative requirements to make a safety approval determination within a specified time.

*Section 414.25 How do I maintain the continued accuracy of my application and provide supplemental information or amendments?*

We would expect that companies may continue development work on systems and services after we accept an application but before we issue a safety approval. If improvements in the system or service should occur during the safety approval application process, you would submit a statement providing the new or corrected information. You would then need to follow the steps outlined in § 414.17 to recertify the accuracy and completeness of the application. It would always be your responsibility to maintain the accuracy of your application. Failure to do so would be a sufficient basis for denial of a safety approval application.

Section 414.41 proposes the requirements for maintaining the accuracy of an application after we issue a safety approval.

You could amend or supplement a safety approval application anytime before we issue or transfer a safety approval.

*Subpart C—Issuance of a Safety Approval*

*Section 414.27 What are the technical criteria for issuing a safety approval?*

The FAA considers that any of the following may provide an adequate basis on which we can issue a safety approval; however, each case must be assessed individually before we can conclude that a proposed system or service is suitable and eligible for a safety approval. While government and industry standards are focused on design and manufacture, a safety approval is based on whether the proposed use satisfies launch safety criteria (risk acceptability). Even if a

standard is satisfied, a safety approval may not result because the proposed use does not satisfy risk acceptability specified in FAA regulations. In identifying and assessing suitable criteria, we would apply the following hierarchy:

- (1) FAA or other appropriate Federal regulations,
- (2) Government-developed or adopted standards,
- (3) Industry consensus performance-based criteria or standard, and finally
- (4) Applicant-developed criteria.

#### Government-Developed Standard

Government-developed standard means a standard developed by a government agency other than the FAA's Commercial Space Transportation office. Examples of acceptable Government-developed standards are MIL-STD-1522B "Design and Operations of Pressurized Missile and Space Systems," DoD-E-83578, MIL-STD-1576, and MIL-I-23659 that define in detail the necessary verifications for ordnance items in safety critical applications.

#### Industry Consensus Standard

Consensus standard means, for the purpose of a safety approval, an industry-developed consensus performance standard that addresses these four topics.

(1) Design and performance. The consensus standard would govern systems, system components, parts design, and minimum performance. An example of a commonly used design and performance standard for pressurized space systems is AIAA S-080-1998. The safety approval applicant also may choose to use other nationally recognized design and performance standards for the consensus standards.

(2) Quality assurance. The consensus standard would govern the necessary quality assurance system requirements used in the manufacture of systems, system components, and parts. The standard would establish quality assurance procedures for manufacturing the individual system, system component, or part so that they meet minimum safety standards and are built as intended.

(3) Production acceptance. The consensus standard would govern the necessary characteristics of the production acceptance test specifications used in manufacturing systems, system components, and parts. A suitable standard would identify the required final product acceptance test procedures that ensure a completed product is safe and performs as intended.

(4) Safety monitoring. The consensus standard would govern the characteristics of the manufacturer's continued operational safety monitoring system. The consensus standard would establish reference system requirements for monitoring and correcting safety issues. A suitable standard would include a process by which systems, system components, and parts users would be told of instances that prevent hazards to safety and the corrective action. In addition, it would identify processes that would ensure manufacturers learn about problems experienced in servicing of systems, systems components, and parts.

A suitable consensus standard would also establish the procedures by which the industry reviews and updates the consensus standards.

#### Applicant-Developed Criteria

Applicant-developed criteria are performance criteria developed or customized by the manufacturer intending to produce the system, system component, or part. The applicant-developed criteria should define:

- (1) Design and minimum performance,
- (2) Quality assurance system requirements,
- (3) Production acceptance test specifications, and
- (4) Continued operational safety monitoring system characteristics.

FAA would make the proposed applicant-developed criteria available to the public as part of the approval process. We would seek public comment on the acceptability and adequacy of the criteria as a proposed performance standard for issuing a safety approval. The FAA would not accept an application for a safety approval unless a suitable criterion exists or could be determined, and that criterion could be made public. The FAA does not propose to develop or issue standards. We would merely propose the criteria to evaluate an item for which an applicant seeks a safety approval.

#### FAA Review of Criteria

The FAA would base its determinations for safety approvals on performance standards that allow the FAA to find that a launch or reentry may be conducted with the safety-approved element under existing licensing criteria and safety standards. Technical criteria designed to achieve FAA safety requirements may exist elsewhere in other Government directives, such as EWR-127-1. Sometimes, there may be no detailed written Government standard, but

Federal launch ranges have followed a clear practice that launch participants accept as "de facto" standards. The FAA would rely on historical practice where it has been shown to protect public health and safety and the safety of property.

#### *Section 414.29 What are the terms and conditions of a safety approval?*

The FAA would issue safety approvals to those applicants who meet all the requirements under this chapter. The scope of the approval would depend on the scope of the demonstration. Where necessary, we would determine specific terms and conditions of a safety approval individually, consistent with the intended use of the safety-approved launch or reentry element. Those terms and conditions would include reporting requirements. Reporting requirements would be similar to those for licenses. They would be tailored to the particular safety approval. For example, a safety approval holder who manufactures a component might be required to report the results of quality assurance testing. The holder of a safety approval would be required to report major failures of the system when used in a non-FAA licensed activity.

We would grant safety approvals for five years, consistent with the current license term for launch and reentry operator licenses, subject to renewal. We considered granting safety approvals for an indefinite period of time. However, even though the holder of the safety approval is required to maintain the accuracy of its application, it is possible for changes to occur that might affect the safety approval. Five years is a reasonable interval in which to examine the approval to ensure that changes have been accurately reflected in the application and that external factors (for example, a modified standard) have not negated the grounds on which we granted the approval.

The license applicant might discover during the licensing process that changes have occurred invalidating the safety approval. A five-year renewal for a safety approval makes such an unexpected discovery less likely. In addition, the FAA and industry would gain experience during the five-year term of safety approval that could make modifying the safety approval advisable. Therefore, FAA believes that a formal reaffirmation of the currency of the information in the application provides an opportunity for the safety approval holder to review its system or service and report any changes that might have gone unreported. The FAA could then evaluate the changes to ensure the safety

approval remains valid and make any changes that might be required to the terms and conditions of the safety approval.

Because a safety approval has no meaning independent of its use in facilitating the FAA licensing process, there would always be an opportunity to affirm its continued validity during the licensing review process. Also, because the holder of a safety approval would be required to maintain the currency of information in its application for the approval, the approval would only be valid for the representations made in the completed application. FAA would have to approve material changes for the safety approval to remain valid with those changes.

*Section 414.31 How would I incorporate a safety approval into a license application?*

The launch or reentry license applicant would need to reference the safety approval and show that its use in the launch of the particular launch vehicle or the reentry of a particular reentry vehicle falls within the parameters for which the safety approval was granted. The FAA would expect that, in arranging to obtain hardware, processes, or services, the license applicant would be in contact with the holder of the safety approval. The license applicant could obtain detailed information, including proprietary information from the safety approval holder, in order to verify that the proposed use falls within the safety approval parameters. We would not make the proprietary data included in your application public.

*Section 414.33 What is the procedure when the FAA denies a safety approval application or the transfer of a safety approval or suspends, modifies, or revokes a safety approval?*

First, we would tell you, in writing, that we have denied your safety approval application or request to transfer a safety approval or that we have suspended, modified, or revoked your safety approval and state the reasons.

You may try to correct any deficiencies identified by the FAA and request reconsideration of the revised application or of the FAA action to suspend, modify, or revoke your safety approval.

You may also apply for administrative review of a denial in the same manner that an applicant for a license and a proposed transferee of a license or an owner or operator of a payload may currently apply for a determination under Part 406.

*Section 414.35 How do I renew a safety approval?*

The safety approval holder could apply for a renewal of the safety approval just as a licensee can apply for a renewal of a license. You should submit the renewal application at least 90 days before the approval's expiration date. The application may reference information contained in the original application as part of the renewal application. You should describe any proposed changes.

*Section 414.37 How is compliance with the terms and conditions of a safety approval monitored?*

To maintain the validity of a safety approval, a safety approval holder would have to allow access by and cooperate with Federal officers or employees or other individuals authorized by the FAA, to observe safety-approved activities. These activities include manufacturing, production, testing facilities, or assembly sites used by a safety approval holder or any contractor in the production, assembly, or testing of a launch or reentry vehicle or a safety system associated with the launch or reentry of such a vehicle. Officials might also observe a safety-approved process or service, including training programs and personnel qualifications.

We considered the need for monitoring activities related to safety approvals. We have authority to monitor these types of activities when they are associated with FAA licensed launch, reentry, or site operations. However, we have not monitored these activities absent a license. Although activities performed before issuing a license might be critical to safety, the FAA has relied solely on post-licensing monitoring. We verify the satisfactory performance of any safety critical activities before issuing a license. However, we believe that a safety approval is a different situation. By voluntarily obtaining a safety approval, the approval holder would set itself up to offer hardware, processes, or services to others, and become a contractor to a licensee. By monitoring these activities, as necessary, we would be provided some assurance about the continued validity of the safety approval. Therefore, there would be a benefit to the holder and to the potential user under a licensed activity.

*Section 414.39 How would the FAA modify, suspend or revoke a safety approval?*

**Modifying a Safety Approval**

Safety approval modifications could occur in two ways.

- The safety approval holder applies to the FAA to modify the safety approval.
- FAA initiates the modification when it finds the modification is consistent with the requirements of the Act.

Any modification made under this section would take effect immediately and continue in effect during any review of the action under part 406 of these regulations.

**Suspending or Revoking a Safety Approval**

Conditions could arise when the FAA would suspend or revoke a safety approval issued under this chapter. The following list gives examples of those conditions:

- Safety approval holder fails to comply with any requirement of the Act.
- Safety approval holder fails to comply with any regulation issued under the Act.
- Safety approval holder fails to comply with a term or condition of the safety approval or any other applicable requirement.
- Public health and safety or safety of property so requires.

Any modification made under this section would take effect immediately and continue in effect during any review of the action.

Whenever the FAA would take any action under this section, we would immediately tell you in writing of our finding and the action that we have taken or propose to take on such finding.

*Section 414.41 How do I maintain the continued accuracy of the application that supports a safety approval and modify a safety approval?*

Once you hold a safety approval for a system or service, you would be responsible for maintaining the accuracy of representations contained in the safety approval application for the entire term of the safety approval. If you make material changes in the safety-approved system or service that could affect public health and safety or safety of property, you would have to apply to the FAA to modify the safety approval.

The FAA anticipates that safety approval holders would upgrade their systems and services. As technology changes, the safety-approved system or



service is likely to change. However, you would prepare and submit an application to modify a safety approval following § 414.17 of this chapter. You would have to point out any part of your safety approval application that would be changed or affected by a proposed modification.

We would determine whether the safety approval remains valid because of a proposed modification. We would approve a modification that satisfies the requirements set forth in this part. On approval of a modification, we would issue you a written approval stating terms or conditions of the safety approval that are changed, added, or deleted.

*Section 414.43 For how long do I maintain any safety approval records?*

The FAA considers maintaining the history of a safety approval necessary. Therefore, it would require you to maintain all records necessary to verify that activities are conducted following representations contained in the application for the valid period of the safety approval, plus one year. The valid period would include the original term of the safety approval, plus all renewal periods. Of course, you may not be aware of all licenses that use a particular safety approval. Hence, you should seek advice from the FAA before disposing of any records for an expired safety approval.

*Section 414.45 How would I transfer a safety approval?*

Either the current holder or the prospective transferee could request the FAA to transfer a safety approval provided the other party agrees to the transfer and that the prospective transferee meets the eligibility criteria for a safety approval.

There may be cases when such a transfer is justified. For example, one company may acquire some or all of the assets of another company. You would need to submit a safety approval application following § 414.17 and meet the requirements of § 414.27. You may incorporate by reference any relevant portions of the application that resulted in the safety approval whose transfer you seek. We would transfer a safety approval to an applicant who has obtained all the approvals and determinations required under this chapter for a safety approval. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate by reference any findings made as part of the record to support the initial safety approval determination. We might modify a safety approval to reflect any changes

necessary because of a safety approval transfer.

*Section 414.47 How will FAA make public the criteria by which a safety approval was issued?*

Because the FAA proposes to issue safety approvals individually, we believe it is important to inform the public of the basis for issuing a specific safety approval.

The FAA will publish in the **Federal Register** its intent to use certain performance-based criteria in granting a safety approval and its reasons for accepting it. Where the criteria include a commonly known industry standard, the public can request a copy of the standard from the sponsoring entity, for example, American Institute of Aeronautics and Astronautics (AIAA), American Society for Testing and Materials (ASTM), and American Society of Mechanical Engineers (ASME). Publication of the criteria is for information only, and not for comment; the public may write the FAA and offer suggestions.

**Paperwork Reduction Act**

Information collection requirements associated with this NPRM have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Numbers 2120-0608 and 2120-0643. These approvals are applicable because this NPRM merely permits consideration of a portion of the activity covered by the cited documents. In other words, a part of the information required for FAA-licensed activity is collected for the safety approval and does not need to be collected again as part of the license application.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned

determination that the benefits of the intended regulation justify the costs. Our assessment of this rulemaking indicates that its economic impact is minimal because safety approvals under the proposed rulemaking are not mandatory so there would be no costs imposed on industry. The FAA anticipates that launch license applicants would only pursue a safety approval if they believe they can save money by using a safety approval. If not they would continue to obtain approval through the licensing determination. The proposed rule might result in slight costs to the government, but more likely it would result in government cost savings.

Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

**Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it

is determined that the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it be included in the preamble and a full regulatory evaluation need not be prepared.

The 1998 amendments to the Commercial Space Launch Act of 1984 added authority for establishing procedures for "safety approvals" of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel that may be used in conducting licensed commercial space launch or reentry activities. (See Commercial Space Launch Act of 1998, Pub. L. 105-303.) This rulemaking would establish those procedures. The rule would enable license applicants to use safety-approved elements for proposed launch or reentry activities without having to resubmit certain information. The existence of a safety approval could streamline the licensing process. The proposed rule would define the requirements for obtaining these voluntary safety approvals.

A key element of the proposed rule is that the safety approvals are strictly elective. A safety approval would enable the U.S. commercial space transportation industry to select "approved" systems, processes, services, and personnel, possibly reducing the information required for a license application. Because safety approvals under the proposed rulemaking are not mandatory, the FAA anticipates that applicants would only pursue a safety approval if they believed the benefits outweighed the costs.

The proposal does not impose costs on the license applicant, because the applicant is free to continue to obtain approval through the licensing determination. There might be cost savings to license applicants because the cost of using safety-approved elements could be less than the cost the licensee might incur in seeking approval directly through the licensing determination. This is because a safety approval could be used for multiple launch licenses without added FAA approval of that portion of the license application other than an evaluation of its intended use relative to the proposed activity.

The proposed rule might result in additional cost to the Federal government. This might occur if a company obtains a safety approval from the FAA, but does not use it. In this case, the FAA would have spent the time for naught in issuing the safety approval. The FAA expects this to be unlikely, as companies would not seek to obtain safety approvals unless the

likelihood of selling their approved product to a licensee is very high.

On the other hand, the proposed rule might result in cost savings to the government. If the safety approval is used for several licenses, then the FAA could apply findings related to safety approvals to different license applicants proposing to use the approved element.

In view of the possible minor additional cost to the Federal government of the proposed rule and the anticipated benefits of the rule, the FAA has determined that the proposed rule would be cost-justified. Since this proposed rule is voluntary, the expected outcome would be to have a minimal impact with positive net benefits, and a regulatory evaluation was not prepared. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule does not impose costs on industry because it establishes a wholly voluntary process as an alternative to the current licensing process. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### **Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that since it would not impose standards on industry and because it establishes a wholly voluntary program, it would not create an unnecessary obstacle to the foreign commerce of the United States.

#### **Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

#### **Executive Order 13132, Federalism**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

#### **Plain English**

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
  - Would the regulations be easier to understand if they were divided into more (but shorter) sections?
  - Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

### Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 308b and involves no extraordinary circumstances.

### Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### List of Subjects in 14 CFR Part 414

Airspace, Aviation safety, Space transportation and exploration.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

## PART 414—SAFETY APPROVALS

1. Add part 414 to read as follows.

### Subpart A—General

Sec.

- 414.1 What is the basis and scope of this rule?
- 414.3 To what does this rule apply?
- 414.5 What is a safety approval?
- 414.7 Who must obtain a safety approval?
- 414.9 Who may apply for a safety approval?
- 414.11 What rights are not conferred by a safety approval?

### Subpart B—Safety Approval Application

- 414.13 What is the pre-application process?

- 414.15 How will the FAA determine whether something is eligible and suitable for a safety approval?
- 414.17 How do I prepare an application?
- 414.19 How can I assure confidentiality of the information I submit on a safety approval application?
- 414.21 How does the FAA handle an initial application?
- 414.23 Is there a specified timeframe for the review period?
- 414.25 How do I maintain the continued accuracy of my application and provide supplemental information or amendments?

### Subpart C—Issuance of a Safety Approval

- 414.27 What are the technical criteria for a safety approval?
- 414.29 What are the terms and conditions of a safety approval?
- 414.31 How would a license applicant incorporate a safety approval into a launch or reentry license application?
- 414.33 What is the procedure when the FAA denies a safety approval application or renewal application or the request to transfer a safety-approval or suspends, modifies, or revokes a safety approval?
- 414.35 How do I renew a safety approval?
- 414.37 How is compliance with the terms and conditions of a safety approval monitored?
- 414.39 How would the FAA modify, suspend, or revoke a safety approval?
- 414.41 How do I maintain the continued accuracy of the application that supports a safety approval and modify an approval?
- 414.43 How long do I maintain any safety approval records?
- 414.45 How would I transfer a safety approval?
- 414.47 How will FAA make public the criteria by which a safety approval was issued?

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### Subpart A—General

#### § 414.1 What is the basis and scope of this rule?

This part establishes procedures for obtaining a safety approval. These procedures apply to applications for obtaining a safety approval, transfer of an existing safety approval, and renewal of an existing safety approval. Safety approvals issued under this part may be used to support the application review for one or more launch or reentry license requests under other parts of this chapter. A safety approval is limited to approved use within a defined envelope. It is not an approval to conduct a licensable activity.

#### § 414.3 To what does this rule apply?

This part applies to an applicant seeking to obtain a safety approval. That safety approval may be for a launch vehicle, reentry vehicle, safety system, process, service, or personnel for use in conducting a licensed launch of a

launch vehicle, including a reusable launch vehicle (RLV) mission, or the reentry of a reentry vehicle.

#### § 414.5 What is a safety approval?

In this part, "Safety approval" means the FAA has determined that a licensed launch or reentry using a launch vehicle, reentry vehicle, safety system, process, service, or personnel approved under this part, when used as approved within a defined envelope, will not jeopardize public health and safety or the safety of property.

#### § 414.7 Who must obtain a safety approval?

No one is required to obtain a safety approval.

#### § 414.9 Who may apply for a safety approval?

Anyone may apply for a safety approval.

#### § 414.11 What rights are not conferred by a safety approval?

(a) A safety approval does not confer any authority to conduct activities for which a license is required under 14 CFR chapter III.

(b) A safety approval does not relieve its holder of the duty to comply with all applicable requirements of law or regulation that may apply to the holder's activities.

### Subpart B—Safety Approval Application

#### § 414.13 What is the pre-application process?

You must consult with the FAA before submitting an application. At a minimum, consultation consists of oral discussion with the FAA about the application process and potential issues relevant to the FAA's safety approval decision.

#### § 414.15 How will the FAA determine whether something is eligible and suitable for a safety approval?

(a) *Applicant.* Any eligible person may apply to be the holder of a safety approval. There is no citizenship requirement for a safety approval.

(b) You may be eligible for a safety approval if you are—

- (1) A manufacturer of a launch or reentry vehicle or component;
- (2) The designer/developer of a safety system or process;
- (3) Personnel who perform safety critical functions in conducting a licensed launch or reentry.

(c) You must have sufficient knowledge and expertise with the launch vehicle, reentry vehicle, safety system, process, service, or personnel for which safety approval is sought to

show that its design and operation qualify for a safety approval.

(d) You may seek a safety approval from the FAA for a launch vehicle, reentry vehicle, safety system, process, service, or personnel.

(e) *Criteria.* The FAA will determine individually whether a launch vehicle, reentry vehicle, safety system, process, service, or personnel proposed is eligible for and may be issued a safety approval. We will base our determination on performance-based criteria, such as existing government or industry standards, government specifications, or other proposed criteria against which we may assess the effect on public health and safety and safety of property of a licensed launch or reentry that relies in whole or in part on a safety-approved element.

#### **§ 414.17 How do I prepare an application?**

(a) *Form.* Your application must be in writing, in English, and filed in duplicate with the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, AST-300, Room 331, 800 Independence Avenue, SW., Washington, DC 20591. Attention: System Engineering and Training, Safety Approval Application Review.

(b) *Administrative information.* Your application must identify the following:

- (1) The name and address of the applicant,
- (2) The name, address, and telephone number of any person to whom inquiries and correspondence should be directed, and
- (3) The launch vehicle, reentry vehicle, safety system, process, service, or personnel for which you are applying for a safety approval.

(c) *Technical information.* Your application must—

(1) Contain a Statement of Conformance letter showing compliance to specific criteria to which you propose to show the adequacy of the proposed launch vehicle, reentry vehicle, safety system, process, service, or personnel;

(2) Specify the operating limits for which the safety approval is sought;

(3) Provide the following, as applicable:

(i) Information and analyses required by any AST licensing regulation that might be applicable to demonstrating safe performance of the item for which the safety approval is sought,

(ii) Engineering design and analyses that show the adequacy of the proposed system for its intended use, such that the use in a licensed launch or reentry will not jeopardize public health or safety or the safety of property,

(iii) Relevant manufacturing processes,

(iv) Test and evaluation procedures,

(v) Test results,

(vi) Maintenance procedures, and

(vii) Personnel qualifications and training procedures.

(d) *Signature and certification of accuracy.* Your application must be legibly signed, dated, and certified as true, complete, and accurate by one of the following:

(1) *For a corporation:* An officer authorized to act for the corporation in licensing matters.

(2) For a partnership or a sole proprietorship: A general partner or proprietor, respectively.

(3) For a joint venture, association, or other entity: An officer or other individual duly authorized to act for the joint venture, association, or other entity in licensing matters.

#### **§ 414.19 How can I assure confidentiality of the information I submit on a safety approval application?**

(a) When you provide information or data to the FAA, you may request in writing that trade secrets or proprietary commercial or financial data be treated as confidential. You must make this request at the time you submit the information or data and state the period of time you require confidential treatment.

(b) Mark information or data for which you require confidentiality with an identifying legend, such as “Proprietary Information,” “Proprietary Commercial Information,” “Trade Secret,” or “Confidential Treatment Requested.” Where this marking proves impracticable, attach a cover sheet containing the identifying legend to the information or data for which you are seeking confidential treatment.

(c) If you request confidential treatment for previously submitted information or data, the FAA will honor that request to the extent practicable in case of any prior distribution of the information or data.

(d) Information or data for which you have requested confidential treatment or information or data that qualifies for exemption under section 552(b)(4) of Title 5, United States Code, will not be disclosed to the public unless the Associate Administrator determines that withholding the information or data is contrary to the public or national interest.

(e) If the proposed criteria for evaluating a safety approval is secret, as classified by the U.S. Government, or you want it to remain proprietary or confidential, it cannot be used as a basis for issuance of safety approval.

#### **§ 414.21 How does the FAA handle an initial application?**

(a) The FAA will initially screen an application to determine whether the application is for a safety approval of a launch vehicle, reentry vehicle, safety system, process, service, or personnel. We will then determine if there are existing performance-based criteria, standards, or accepted practices that provide a satisfactory basis for issuing a safety approval.

(b) After completing the initial screening, the FAA tells you, in writing, of one of the following:

(1) The submitted material makes up a substantially complete application package. The notice will state that we recognize the item as eligible for a safety-approval and that an acceptable performance-based criteria, standard, or accepted practice exists against which an application may be evaluated. The application is accepted and the FAA will begin the reviews or evaluations required for a safety approval determination under this chapter.

(2) The application is so incomplete or vague that beginning the reviews or evaluations required for a safety approval determination under this chapter is inappropriate, and the application is rejected. The notice will state the reason(s) for rejection and corrective actions necessary for the application to be accepted. The FAA may return a rejected application to the applicant or may hold it until the applicant provides more information. If your safety approval application is denied, you may try to correct any deficiencies identified by the FAA and request reconsideration of the revised application.

#### **§ 414.23 Is there a specified timeframe for the review period?**

There are no review period deadlines for issuance or denial of a safety approval.

#### **§ 414.25 How do I maintain the continued accuracy of my application and provide supplemental information or amendments?**

(a) You are responsible for the continuing accuracy and completeness of information provided to the FAA as part of a pending safety approval application. Whenever information you provided as part of a safety approval application is no longer accurate and complete in all material respects, you must submit a statement providing the new or corrected information. As part of the submission, you must recertify the accuracy and completeness of the amended application under section 414.17. Failure to comply with any of the requirements set forth in this

paragraph is a sufficient basis for denial of a safety approval application.

(b) You may amend or supplement a safety approval application anytime before issuance or transfer of a safety approval.

### Subpart C—Issuance of a Safety Approval

#### § 414.27 What are the technical criteria for a safety approval?

In identifying and assessing appropriate criteria, the FAA would apply the following hierarchy:

(a) FAA or other appropriate Federal regulations,

(b) Government-developed or adopted standards,

(c) Industry consensus performance-based criteria or standard, and

(d) Applicant-developed criteria.

Applicant-developed criteria are performance standards customized by the manufacturer who intends to produce the system, system component, or part. The applicant-developed criteria must define:

(1) Design and minimum performance,

(2) Quality assurance system requirements,

(3) Production acceptance test specifications, and

(4) Continued operational safety monitoring system characteristics.

You must agree to allow the FAA to make your proposed safety approval criteria available to the public as part of the approval process.

#### § 414.29 What are the terms and conditions of a safety approval?

(a) The FAA issues a safety approval to an applicant who has met all the requirements under this chapter.

(b) The scope of the approval will be limited by the scope of the safety demonstration.

(c) The FAA will determine specific terms and conditions of a safety approval individually, limiting the safety approval to the parameters for which the safety-approved launch or reentry element was approved. The terms and conditions would include reporting requirements tailored to the individual safety approval.

(d) A safety approval is valid for five years and may be renewed.

#### § 414.31 How would a license applicant incorporate a safety approval into a launch or reentry license application?

(a) When applying for a license under Part 413, an applicant must identify any safety approval for a launch vehicle, reentry vehicle, safety system, process, service, or personnel that you propose to use as part of your proposed licensable activity.

(b) The applicant must show that the proposed use of the safety-approved element is consistent with the scope of the safety approval issued by the FAA. The applicant must demonstrate that any alteration in its use does not negate the applicability of the safety-approved element to your intended use of it.

(c) The applicant must certify that you plan to use the safety-approved element in accordance with any terms and conditions of the safety approval issued by the FAA.

(d) Consistent with this section the FAA will rely on a safety approval in its evaluation of a license application, thereby relieving the license applicant of certain regulatory burdens associated with launch and reentry licensing.

#### § 414.33 What is the procedure when the FAA denies a safety approval application or renewal application or the request to transfer a safety-approval or suspends, modifies, or revokes a safety approval?

(a) The FAA tells you, in writing, if your safety approval application or the request to transfer a safety approval has been denied or if the FAA has suspended, modified, or revoked a safety approval and states the reasons.

(b) If your safety approval application is denied, you may try to correct any deficiencies identified by the FAA and request reconsideration of the revised application. You could try to correct any deficiencies identified by the FAA and request reconsideration of the revised application or of the FAA action to suspend, modify, or revoke your safety approval.

(c) The following would be entitled to a determination on the record after an opportunity for a hearing.

(1) An applicant for a safety approval or a safety approval renewal or a proposed transferee of a safety approval under this part regarding any decision to issue or transfer a safety approval with conditions or to deny the issuance or transfer of such safety approval.

(2) A holder of a safety approval regarding any decision to suspend, modify, or revoke a safety approval.

(d) An administrative law judge will be designated to preside over any hearing held under this part.

(e) Submissions and oral presentations would follow the procedures outlined in § 406.3.

(f) The administrative law judges recommended decision would follow the procedures outlined in § 406.5.

#### § 414.35 How do I renew a safety approval?

(a) *Eligibility.* If you hold a safety approval, you may apply to renew it by submitting to the FAA a written application for renewal of the approval

at least 90 days before the expiration date of the approval.

(b) *Application.* (1) A safety approval renewal application must satisfy the requirements set forth in this part and any other applicable part of this chapter.

(2) The application may incorporate by reference information provided as part of the application for the expiring safety approval or any modification to that approval.

(3) You must describe any proposed changes in the conduct of safety-approved systems or services and provide any added information necessary to support the fitness of the proposed changes to meet the criteria upon which we evaluated the safety approval.

(c) *Review of application.* The FAA conducts the reviews required under this chapter to determine whether the applicant's safety approval may be renewed for another five-year term. We may incorporate by reference any findings that are part of the record for the expiring safety approval.

(d) *Grant of safety approval renewal.* After the FAA completes the reviews required by this chapter for a safety approval and makes a safety approval determination, we issue an order amending the expiration date of the safety approval or a new approval. The FAA may impose added or revised terms and conditions necessary to protect public health and safety and the safety of property.

(e) *Denial of a safety approval renewal.* Section 414.33 of this chapter details procedures when the FAA denies a safety approval renewal.

#### § 414.37 How is compliance with the terms and conditions of a safety approval monitored?

Each safety approval holder must allow access by and cooperate with Federal officers or employees or other individuals authorized by the Associate Administrator to view safety-approved activities. These activities include manufacturing, production, testing facilities, or assembly sites used by a safety approval holder or any contractor in the production, assembly, or testing of a launch or reentry vehicle or a safety system associated with the launch or reentry of such a vehicle. Officials may also view a modular safety-approved process or service, including training programs and personnel qualifications.

#### § 414.39 How would the FAA modify, suspend, or revoke a safety approval?

(a) Upon application by a safety approval holder or on the FAA's own initiative, we may modify a safety approval issued under this chapter if we

find the modification is consistent with the requirements of the Act.

(b) If the FAA finds that a safety approval holder has substantially failed to comply with any requirement of the Act, any regulation issued under the Act, the terms and conditions of a safety approval, or any other applicable requirement, or that public health and safety or the safety of property so require, we may suspend or revoke a safety approval issued to that holder under this chapter.

(c) Unless otherwise stated by the FAA, any modification, suspension, or revocation we make under this section—

(1) Takes effect immediately; and

(2) Continues in effect during any review of such action under Part 406 of these regulations.

(d) Whenever the FAA takes any action under this section, we immediately tell you in writing of our finding and the action that we have taken or propose to take on such finding.

**§ 414.41 How do I maintain the continued accuracy of the application that supports a safety approval and modify an approval?**

(a) You are responsible for the continued accuracy of representations contained in the safety approval application for the entire term of the safety approval.

(b) After a safety approval has been issued, you must apply to the FAA for modification of the safety approval if any representation contained in the

application that is material to public health and safety or safety of property would no longer be accurate and complete.

(c) Prepare and submit an application to modify a safety approval following § 414.17. You must point out any part of your license or license application that would be changed or affected by a proposed modification.

(d) The FAA reviews approvals and determinations required by this chapter to determine whether those approvals and determinations remain valid because of a proposed modification. The FAA approves a modification that satisfies the requirements set forth in this part.

(e) On approval of a modification, we issue you a written approval stating terms or conditions of the safety approval that are changed, added, or deleted.

**§ 414.43 How long do I maintain any safety approval records?**

You must maintain all records necessary to verify that activities are following representations contained in the application for the valid period of the safety approval plus one year.

**§ 414.45 How would I transfer a safety approval?**

(a) Only the FAA may transfer a safety approval.

(b) Either the safety approval holder or the prospective transferee may request that a safety approval be

transferred provided the other party agrees to the transfer.

(c) You need to submit a safety approval application under § 414.17 and meet the requirements of § 414.27. You may incorporate by reference relevant portions of the application that resulted in the safety approval transfer you seek.

(d) The FAA will transfer a safety approval to an applicant who has obtained all the approvals and determinations required under this chapter for a safety approval. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate by reference any findings made part of the record to support the initial safety approval determination. The FAA may modify a safety approval to reflect any changes necessary because of a safety approval transfer.

**§ 414.47 How will FAA make public the criteria by which a safety approval was issued?**

FAA will publish in the **Federal Register** a notice of performance-based criteria that we intend to use to evaluate the safety approval application and describe the criteria.

Issued in Washington, DC, on May 24, 2005.

**Patricia G. Smith,**

*Associate Administrator for Commercial Space Transportation.*

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